

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BRIGITTE A. MCCALL

Claimant

VS.

SHAWNEE COUNTY

Respondent

Self-Insured

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Docket No. 239,201

ORDER

Respondent requested Appeals Board review of Administrative Law Judge Bryce D. Benedict's preliminary hearing Order dated January 4, 1999.

ISSUES

The Administrative Law Judge granted claimant's preliminary request for medical treatment and temporary total disability compensation. Respondent contends claimant failed to prove that she suffered an accidental injury arising out of and in the course of her employment. Respondent argues that the more probable explanation for claimant's upper extremity problems is the work she performed in her own business of producing porcelain dolls. Further, respondent argues claimant failed to give timely notice of a work-related accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Both issues raised by the respondent are jurisdictional issues listed in K.S.A. 1998 Supp. 44-534a.

Claimant has been employed as a correctional officer for the Shawnee County Department of Corrections at the Shawnee County Jail since January 26, 1981. Claimant first started having symptoms in her right upper extremity in February 1998. During a visit to her primary care physician, Matthew E. Bohm, M.D., on February 19, 1998, claimant complained of numbness and pain in her right arm and hand. Dr. Bohm's impression was

right upper extremity paresthesias maybe due to thoracic outlet syndrome. The doctor took x-rays of claimant's cervical spine. Dr. Bohm saw claimant again on April 15, 1998, and at that time, diagnosed thoracic outlet syndrome. Claimant was also being treated by a chiropractor for her upper extremity problems.

On June 25, 1998, at Dr. Bohm's request, claimant had EMG testing. The EMG test revealed bilateral median neuropathy at the wrist, moderate on the right and mild on the left. Wade B. Welch, M.D., conducted the EMG testing and suggested referral for carpal tunnel releases.

Claimant testified her job assignment at the Shawnee County Jail changed in April 1998. Her primary responsibility was to pick up and sort, both the incoming and outgoing mail. This included opening and taking the stamps off the incoming mail. Another job duty was to handle all property release procedures for the inmates. Claimant testified those duties required her to use her hands repetitively. Two representative of the respondent also testified that claimant's job duties of opening the mail and handling of property release procedures for the inmates required claimant to use her hands repetitively. The only dispute was the amount of time per day it took to do the particular job assignments.

Claimant testified her upper extremity problems increased as she continued to preform these repetitive work activities. On August 20, 1998, during a treatment visit with Dr. Bohm, claimant testified that Dr. Bohm related her work activities to her upper extremity problems. That same day, claimant notified her supervisor, Lieutenant Bell, that she thought her work activities were causing her symptoms, and she was ready to file a worker compensation claim.

The following day, August 21, 1998, Major Thomas Merkel, the jail administrator, telephoned the claimant and terminated claimant supposedly for reasons not related to her worker's compensation claim. Claimant filed a grievance in reference to the termination and was reinstated to her job on September 22, 1998.

Respondent returned claimant to a nonrepetitive job as a guard which required claimant to open heavy steel doors when checking on the inmates. However, claimant's symptoms continued, and she again notified her supervisor of her continuing problems. Claimant also provided respondent with restrictions recommended by Dr. Bohm of no prolonged sitting, standing, or repetitive lifting, pushing, or pulling. On November 19, 1998, claimant was taken off work by jail administrator Major Thomas R. Merkel. In a memorandum to claimant dated November 19, 1998, Major Merkel requested work restrictions from claimant's physician so the respondent could determine whether claimant's present physical condition met the minimum requirements to be a correction officer.

On the date of the preliminary hearing, December 30, 1998, claimant remained off work receiving accumulated sick leave pay. During this period, on December 24, 1998, respondent had claimant examined by Sergio Delgado, M.D. In a report dated December 24, 1998, Dr. Delgado related claimant's bilateral carpal tunnel syndrome, moderate on the

right and mild on the left, as either developed by her work activities or probably aggravated by her work activities with the respondent.

Respondent argues that claimant's repetitive activities in making porcelain dolls in a private business she conducted at the same time she was working for respondent as the more reasonable explanation for her current symptoms. However, claimant established through her testimony that her production of porcelain dolls in 1998 was very limited and her participation in that production was limited to painting the doll's faces. After claimant's hands became symptomatic, she testified she no longer was involved in the hand intensity activities of scraping and sanding the dolls. She had not done those activities since sometime in March of 1998. Furthermore, claimant had obtained help from three other individuals to do all of the hard scraping and sanding work. Claimant also testified a large portion of the porcelain dolls she sold were imitation porcelain dolls purchased instead of her making them. The purchased dolls only required to be dressed and did not require the scraping or the sanding.

At this point in the proceedings, the Appeals Board finds claimant through her testimony and Dr. Delgado's medical examination report has established it is more probable true than not that claimant's bilateral carpal tunnel syndrome condition is related to her repetitive work activities while employed by the respondent.

Claimant performed repetitive work activities through August 20, 1998. Claimant testified and Major Thomas Merkel also testified that claimant notified respondent on August 20, 1998, that her pain and discomfort in her upper extremities was related to her work activities. Therefore, the Appeals Board affirms the Administrative Law Judge's finding that claimant gave respondent the required timely notice of her accident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Bryce D. Benedict's preliminary hearing Order dated January 4, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1999.

BOARD MEMBER

c: George H. Pearson III, Topeka, KS
Jeff K. Cooper, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director